

108TH CONGRESS
1ST SESSION

S. 545

To amend title I of the Employee Retirement Income Security Act of 1974 to improve access and choice for entrepreneurs with small businesses with respect to medical care for their employees.

IN THE SENATE OF THE UNITED STATES

MARCH 6, 2003

Ms. SNOWE (for herself, Mr. BOND, Mr. TALENT, Mrs. DOLE, Mr. MCCAIN, Mr. COLEMAN, and Mrs. HUTCHISON) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To amend title I of the Employee Retirement Income Security Act of 1974 to improve access and choice for entrepreneurs with small businesses with respect to medical care for their employees.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Small Business Health Fairness Act of 2003”.

6 (b) TABLE OF CONTENTS.—The table of contents is
7 as follows:

Sec. 1. Short title and table of contents.

Sec. 2. Rules governing association health plans.

“PART 8—RULES GOVERNING ASSOCIATION HEALTH PLANS

“Sec. 801. Association health plans.

“Sec. 802. Certification of association health plans.

“Sec. 803. Requirements relating to sponsors and boards of trustees.

“Sec. 804. Participation and coverage requirements.

“Sec. 805. Other requirements relating to plan documents, contribution rates, and benefit options.

“Sec. 806. Maintenance of reserves and provisions for solvency for plans providing health benefits in addition to health insurance coverage.

“Sec. 807. Requirements for application and related requirements.

“Sec. 808. Notice requirements for voluntary termination.

“Sec. 809. Corrective actions and mandatory termination.

“Sec. 810. Trusteeship by the Secretary of insolvent association health plans providing health benefits in addition to health insurance coverage.

“Sec. 811. State assessment authority.

“Sec. 812. Definitions and rules of construction.

Sec. 3. Clarification of treatment of single employer arrangements.

Sec. 4. Clarification of treatment of certain collectively bargained arrangements.

Sec. 5. Enforcement provisions relating to association health plans.

Sec. 6. Cooperation between Federal and State authorities.

Sec. 7. Effective date and transitional and other rules.

1 SEC. 2. RULES GOVERNING ASSOCIATION HEALTH PLANS.

2 (a) IN GENERAL.—Subtitle B of title I of the Em-
3 ployee Retirement Income Security Act of 1974 is amend-
4 ed by adding after part 7 the following new part:

5 “PART 8—RULES GOVERNING ASSOCIATION HEALTH
6 PLANS

7 **“SEC. 801. ASSOCIATION HEALTH PLANS.**

8 “(a) IN GENERAL.—For purposes of this part, the
9 term ‘association health plan’ means a group health plan
10 whose sponsor is (or is deemed under this part to be) de-
11 scribed in subsection (b).

1 “(b) SPONSORSHIP.—The sponsor of a group health
2 plan is described in this subsection if such sponsor—

3 “(1) is organized and maintained in good faith,
4 with a constitution and bylaws specifically stating its
5 purpose and providing for periodic meetings on at
6 least an annual basis, as a bona fide trade associa-
7 tion, a bona fide industry association (including a
8 rural electric cooperative association or a rural tele-
9 phone cooperative association), a bona fide profes-
10 sional association, or a bona fide chamber of com-
11 merce (or similar bona fide business association, in-
12 cluding a corporation or similar organization that
13 operates on a cooperative basis (within the meaning
14 of section 1381 of the Internal Revenue Code of
15 1986)), for substantial purposes other than that of
16 obtaining or providing medical care;

17 “(2) is established as a permanent entity which
18 receives the active support of its members and re-
19 quires for membership payment on a periodic basis
20 of dues or payments necessary to maintain eligibility
21 for membership in the sponsor; and

22 “(3) does not condition membership, such dues
23 or payments, or coverage under the plan on the
24 basis of health status-related factors with respect to
25 the employees of its members (or affiliated mem-

1 bers), or the dependents of such employees, and does
 2 not condition such dues or payments on the basis of
 3 group health plan participation.

4 Any sponsor consisting of an association of entities which
 5 meet the requirements of paragraphs (1), (2), and (3)
 6 shall be deemed to be a sponsor described in this sub-
 7 section.

8 **“SEC. 802. CERTIFICATION OF ASSOCIATION HEALTH**
 9 **PLANS.**

10 “(a) IN GENERAL.—The applicable authority shall
 11 prescribe by regulation, through negotiated rulemaking, a
 12 procedure under which, subject to subsection (b), the ap-
 13 plicable authority shall certify association health plans
 14 which apply for certification as meeting the requirements
 15 of this part.

16 “(b) STANDARDS.—Under the procedure prescribed
 17 pursuant to subsection (a), in the case of an association
 18 health plan that provides at least one benefit option which
 19 does not consist of health insurance coverage, the applica-
 20 ble authority shall certify such plan as meeting the re-
 21 quirements of this part only if the applicable authority is
 22 satisfied that the applicable requirements of this part are
 23 met (or, upon the date on which the plan is to commence
 24 operations, will be met) with respect to the plan.

1 “(c) REQUIREMENTS APPLICABLE TO CERTIFIED
 2 PLANS.—An association health plan with respect to which
 3 certification under this part is in effect shall meet the ap-
 4 plicable requirements of this part, effective on the date
 5 of certification (or, if later, on the date on which the plan
 6 is to commence operations).

7 “(d) REQUIREMENTS FOR CONTINUED CERTIFI-
 8 CATION.—The applicable authority may provide by regula-
 9 tion, through negotiated rulemaking, for continued certifi-
 10 cation of association health plans under this part.

11 “(e) CLASS CERTIFICATION FOR FULLY INSURED
 12 PLANS.—The applicable authority shall establish a class
 13 certification procedure for association health plans under
 14 which all benefits consist of health insurance coverage.
 15 Under such procedure, the applicable authority shall pro-
 16 vide for the granting of certification under this part to
 17 the plans in each class of such association health plans
 18 upon appropriate filing under such procedure in connec-
 19 tion with plans in such class and payment of the pre-
 20 scribed fee under section 807(a).

21 “(f) CERTIFICATION OF SELF-INSURED ASSOCIATION
 22 HEALTH PLANS.—An association health plan which offers
 23 one or more benefit options which do not consist of health
 24 insurance coverage may be certified under this part only
 25 if such plan consists of any of the following:

1 “(1) a plan which offered such coverage on the
2 date of the enactment of the Small Business Health
3 Fairness Act of 2003,

4 “(2) a plan under which the sponsor does not
5 restrict membership to one or more trades and busi-
6 nesses or industries and whose eligible participating
7 employers represent a broad cross-section of trades
8 and businesses or industries, or

9 “(3) a plan whose eligible participating employ-
10 ers represent one or more trades or businesses, or
11 one or more industries, consisting of any of the fol-
12 lowing: agriculture; equipment and automobile deal-
13 erships; barbering and cosmetology; certified public
14 accounting practices; child care; construction; dance,
15 theatrical and orchestra productions; disinfecting
16 and pest control; financial services; fishing;
17 foodservice establishments; hospitals; labor organiza-
18 tions; logging; manufacturing (metals); mining; med-
19 ical and dental practices; medical laboratories; pro-
20 fessional consulting services; sanitary services; trans-
21 portation (local and freight); warehousing; whole-
22 saling/distributing; or any other trade or business or
23 industry which has been indicated as having average
24 or above-average risk or health claims experience by
25 reason of State rate filings, denials of coverage, pro-

1 posed premium rate levels, or other means dem-
 2 onstrated by such plan in accordance with regula-
 3 tions which the Secretary shall prescribe through ne-
 4 gotiated rulemaking.

5 **“SEC. 803. REQUIREMENTS RELATING TO SPONSORS AND**
 6 **BOARDS OF TRUSTEES.**

7 “(a) SPONSOR.—The requirements of this subsection
 8 are met with respect to an association health plan if the
 9 sponsor has met (or is deemed under this part to have
 10 met) the requirements of section 801(b) for a continuous
 11 period of not less than 3 years ending with the date of
 12 the application for certification under this part.

13 “(b) BOARD OF TRUSTEES.—The requirements of
 14 this subsection are met with respect to an association
 15 health plan if the following requirements are met:

16 “(1) FISCAL CONTROL.—The plan is operated,
 17 pursuant to a trust agreement, by a board of trust-
 18 ees which has complete fiscal control over the plan
 19 and which is responsible for all operations of the
 20 plan.

21 “(2) RULES OF OPERATION AND FINANCIAL
 22 CONTROLS.—The board of trustees has in effect
 23 rules of operation and financial controls, based on a
 24 3-year plan of operation, adequate to carry out the

1 terms of the plan and to meet all requirements of
 2 this title applicable to the plan.

3 “(3) RULES GOVERNING RELATIONSHIP TO
 4 PARTICIPATING EMPLOYERS AND TO CONTRAC-
 5 TORS.—

6 “(A) IN GENERAL.—Except as provided in
 7 subparagraphs (B) and (C), the members of the
 8 board of trustees are individuals selected from
 9 individuals who are the owners, officers, direc-
 10 tors, or employees of the participating employ-
 11 ers or who are partners in the participating em-
 12 ployers and actively participate in the business.

13 “(B) LIMITATION.—

14 “(i) GENERAL RULE.—Except as pro-
 15 vided in clauses (ii) and (iii), no such
 16 member is an owner, officer, director, or
 17 employee of, or partner in, a contract ad-
 18 ministrator or other service provider to the
 19 plan.

20 “(ii) LIMITED EXCEPTION FOR PRO-
 21 VIDERS OF SERVICES SOLELY ON BEHALF
 22 OF THE SPONSOR.—Officers or employees
 23 of a sponsor which is a service provider
 24 (other than a contract administrator) to
 25 the plan may be members of the board if

1 they constitute not more than 25 percent
 2 of the membership of the board and they
 3 do not provide services to the plan other
 4 than on behalf of the sponsor.

5 “(iii) TREATMENT OF PROVIDERS OF
 6 MEDICAL CARE.—In the case of a sponsor
 7 which is an association whose membership
 8 consists primarily of providers of medical
 9 care, clause (i) shall not apply in the case
 10 of any service provider described in sub-
 11 paragraph (A) who is a provider of medical
 12 care under the plan.

13 “(C) CERTAIN PLANS EXCLUDED.—Sub-
 14 paragraph (A) shall not apply to an association
 15 health plan which is in existence on the date of
 16 the enactment of the Small Business Health
 17 Fairness Act of 2003.

18 “(D) SOLE AUTHORITY.—The board has
 19 sole authority under the plan to approve appli-
 20 cations for participation in the plan and to con-
 21 tract with a service provider to administer the
 22 day-to-day affairs of the plan.

23 “(c) TREATMENT OF FRANCHISE NETWORKS.—In
 24 the case of a group health plan which is established and

1 maintained by a franchiser for a franchise network con-
 2 sisting of its franchisees—

3 “(1) the requirements of subsection (a) and sec-
 4 tion 801(a)(1) shall be deemed met if such require-
 5 ments would otherwise be met if the franchiser were
 6 deemed to be the sponsor referred to in section
 7 801(b), such network were deemed to be an associa-
 8 tion described in section 801(b), and each franchisee
 9 were deemed to be a member (of the association and
 10 the sponsor) referred to in section 801(b); and

11 “(2) the requirements of section 804(a)(1) shall
 12 be deemed met.

13 The Secretary may by regulation, through negotiated rule-
 14 making, define for purposes of this subsection the terms
 15 ‘franchiser’, ‘franchise network’, and ‘franchisee’.

16 “(d) CERTAIN COLLECTIVELY BARGAINED PLANS.—

17 “(1) IN GENERAL.—In the case of a group
 18 health plan described in paragraph (2)—

19 “(A) the requirements of subsection (a)
 20 and section 801(a)(1) shall be deemed met;

21 “(B) the joint board of trustees shall be
 22 deemed a board of trustees with respect to
 23 which the requirements of subsection (b) are
 24 met; and

1 “(C) the requirements of section 804 shall
2 be deemed met.

3 “(2) REQUIREMENTS.—A group health plan is
4 described in this paragraph if—

5 “(A) the plan is a multiemployer plan; or

6 “(B) the plan is in existence on April 1,
7 2003, and would be described in section
8 3(40)(A)(i) but solely for the failure to meet
9 the requirements of section 3(40)(C)(ii).

10 “(3) CONSTRUCTION.—A group health plan de-
11 scribed in paragraph (2) shall only be treated as an
12 association health plan under this part if the spon-
13 sor of the plan applies for, and obtains, certification
14 of the plan as an association health plan under this
15 part.

16 **“SEC. 804. PARTICIPATION AND COVERAGE REQUIRE-**
17 **MENTS.**

18 “(a) COVERED EMPLOYERS AND INDIVIDUALS.—The
19 requirements of this subsection are met with respect to
20 an association health plan if, under the terms of the
21 plan—

22 “(1) each participating employer must be—

23 “(A) a member of the sponsor,

24 “(B) the sponsor, or

1 “(C) an affiliated member of the sponsor
2 with respect to which the requirements of sub-
3 section (b) are met,
4 except that, in the case of a sponsor which is a pro-
5 fessional association or other individual-based asso-
6 ciation, if at least one of the officers, directors, or
7 employees of an employer, or at least one of the in-
8 dividuals who are partners in an employer and who
9 actively participates in the business, is a member or
10 such an affiliated member of the sponsor, partici-
11 pating employers may also include such employer;
12 and

13 “(2) all individuals commencing coverage under
14 the plan after certification under this part must
15 be—

16 “(A) active or retired owners (including
17 self-employed individuals), officers, directors, or
18 employees of, or partners in, participating em-
19 ployers; or

20 “(B) the beneficiaries of individuals de-
21 scribed in subparagraph (A).

22 “(b) COVERAGE OF PREVIOUSLY UNINSURED EM-
23 PLOYEES.—In the case of an association health plan in
24 existence on the date of the enactment of the Small Busi-
25 ness Health Fairness Act of 2003, an affiliated member

1 of the sponsor of the plan may be offered coverage under
 2 the plan as a participating employer only if—

3 “(1) the affiliated member was an affiliated
 4 member on the date of certification under this part;
 5 or

6 “(2) during the 12-month period preceding the
 7 date of the offering of such coverage, the affiliated
 8 member has not maintained or contributed to a
 9 group health plan with respect to any of its employ-
 10 ees who would otherwise be eligible to participate in
 11 such association health plan.

12 “(c) INDIVIDUAL MARKET UNAFFECTED.—The re-
 13 quirements of this subsection are met with respect to an
 14 association health plan if, under the terms of the plan,
 15 no participating employer may provide health insurance
 16 coverage in the individual market for any employee not
 17 covered under the plan which is similar to the coverage
 18 contemporaneously provided to employees of the employer
 19 under the plan, if such exclusion of the employee from cov-
 20 erage under the plan is based on a health status-related
 21 factor with respect to the employee and such employee
 22 would, but for such exclusion on such basis, be eligible
 23 for coverage under the plan.

24 “(d) PROHIBITION OF DISCRIMINATION AGAINST
 25 EMPLOYERS AND EMPLOYEES ELIGIBLE TO PARTICI-

1 PATE.—The requirements of this subsection are met with
 2 respect to an association health plan if—

3 “(1) under the terms of the plan, all employers
 4 meeting the preceding requirements of this section
 5 are eligible to qualify as participating employers for
 6 all geographically available coverage options, unless,
 7 in the case of any such employer, participation or
 8 contribution requirements of the type referred to in
 9 section 2711 of the Public Health Service Act are
 10 not met;

11 “(2) upon request, any employer eligible to par-
 12 ticipate is furnished information regarding all cov-
 13 erage options available under the plan; and

14 “(3) the applicable requirements of sections
 15 701, 702, and 703 are met with respect to the plan.

16 **“SEC. 805. OTHER REQUIREMENTS RELATING TO PLAN**
 17 **DOCUMENTS, CONTRIBUTION RATES, AND**
 18 **BENEFIT OPTIONS.**

19 “(a) IN GENERAL.—The requirements of this section
 20 are met with respect to an association health plan if the
 21 following requirements are met:

22 “(1) CONTENTS OF GOVERNING INSTRU-
 23 MENTS.—The instruments governing the plan in-
 24 clude a written instrument, meeting the require-

1 ments of an instrument required under section
2 402(a)(1), which—

3 “(A) provides that the board of trustees
4 serves as the named fiduciary required for plans
5 under section 402(a)(1) and serves in the ca-
6 pacity of a plan administrator (referred to in
7 section 3(16)(A));

8 “(B) provides that the sponsor of the plan
9 is to serve as plan sponsor (referred to in sec-
10 tion 3(16)(B)); and

11 “(C) incorporates the requirements of sec-
12 tion 806.

13 “(2) CONTRIBUTION RATES MUST BE NON-
14 DISCRIMINATORY.—

15 “(A) The contribution rates for any par-
16 ticipating small employer do not vary on the
17 basis of any health status-related factor in rela-
18 tion to employees of such employer or their
19 beneficiaries and do not vary on the basis of the
20 type of business or industry in which such em-
21 ployer is engaged.

22 “(B) Nothing in this title or any other pro-
23 vision of law shall be construed to preclude an
24 association health plan, or a health insurance
25 issuer offering health insurance coverage in

1 connection with an association health plan,
 2 from—

3 “(i) setting contribution rates based
 4 on the claims experience of the plan; or

5 “(ii) varying contribution rates for
 6 small employers in a State to the extent
 7 that such rates could vary using the same
 8 methodology employed in such State for
 9 regulating premium rates in the small
 10 group market with respect to health insur-
 11 ance coverage offered in connection with
 12 bona fide associations (within the meaning
 13 of section 2791(d)(3) of the Public Health
 14 Service Act),

15 subject to the requirements of section 702(b)
 16 relating to contribution rates.

17 “(3) FLOOR FOR NUMBER OF COVERED INDIVIDUALS WITH RESPECT TO CERTAIN PLANS.—If
 18 any benefit option under the plan does not consist
 19 of health insurance coverage, the plan has as of the
 20 beginning of the plan year not fewer than 1,000 participants and beneficiaries.

23 “(4) MARKETING REQUIREMENTS.—

24 “(A) IN GENERAL.—If a benefit option
 25 which consists of health insurance coverage is

1 offered under the plan, State-licensed insurance
 2 agents shall be used to distribute to small em-
 3 ployers coverage which does not consist of
 4 health insurance coverage in a manner com-
 5 parable to the manner in which such agents are
 6 used to distribute health insurance coverage.

7 “(B) STATE-LICENSED INSURANCE
 8 AGENTS.—For purposes of subparagraph (A),
 9 the term ‘State-licensed insurance agents’
 10 means one or more agents who are licensed in
 11 a State and are subject to the laws of such
 12 State relating to licensure, qualification, test-
 13 ing, examination, and continuing education of
 14 persons authorized to offer, sell, or solicit
 15 health insurance coverage in such State.

16 “(5) REGULATORY REQUIREMENTS.—Such
 17 other requirements as the applicable authority deter-
 18 mines are necessary to carry out the purposes of this
 19 part, which shall be prescribed by the applicable au-
 20 thority by regulation through negotiated rulemaking.

21 “(b) ABILITY OF ASSOCIATION HEALTH PLANS TO
 22 DESIGN BENEFIT OPTIONS.—Subject to section 514(d),
 23 nothing in this part or any provision of State law (as de-
 24 fined in section 514(c)(1)) shall be construed to preclude
 25 an association health plan, or a health insurance issuer

1 offering health insurance coverage in connection with an
 2 association health plan, from exercising its sole discretion
 3 in selecting the specific items and services consisting of
 4 medical care to be included as benefits under such plan
 5 or coverage, except (subject to section 514) in the case
 6 of any law to the extent that it (1) prohibits an exclusion
 7 of a specific disease from such coverage, or (2) is not pre-
 8 empted under section 731(a)(1) with respect to matters
 9 governed by section 711 or 712.

10 **“SEC. 806. MAINTENANCE OF RESERVES AND PROVISIONS**
 11 **FOR SOLVENCY FOR PLANS PROVIDING**
 12 **HEALTH BENEFITS IN ADDITION TO HEALTH**
 13 **INSURANCE COVERAGE.**

14 “(a) IN GENERAL.—The requirements of this section
 15 are met with respect to an association health plan if—

16 “(1) the benefits under the plan consist solely
 17 of health insurance coverage; or

18 “(2) if the plan provides any additional benefit
 19 options which do not consist of health insurance cov-
 20 erage, the plan—

21 “(A) establishes and maintains reserves
 22 with respect to such additional benefit options,
 23 in amounts recommended by the qualified actu-
 24 ary, consisting of—

1 “(i) a reserve sufficient for unearned
2 contributions;

3 “(ii) a reserve sufficient for benefit li-
4 abilities which have been incurred, which
5 have not been satisfied, and for which risk
6 of loss has not yet been transferred, and
7 for expected administrative costs with re-
8 spect to such benefit liabilities;

9 “(iii) a reserve sufficient for any other
10 obligations of the plan; and

11 “(iv) a reserve sufficient for a margin
12 of error and other fluctuations, taking into
13 account the specific circumstances of the
14 plan; and

15 “(B) establishes and maintains aggregate
16 and specific excess/stop loss insurance and sol-
17 vency indemnification, with respect to such ad-
18 ditional benefit options for which risk of loss
19 has not yet been transferred, as follows:

20 “(i) The plan shall secure aggregate
21 excess/stop loss insurance for the plan
22 with an attachment point which is not
23 greater than 125 percent of expected gross
24 annual claims. The applicable authority
25 may by regulation, through negotiated

1 rulemaking, provide for upward adjust-
2 ments in the amount of such percentage in
3 specified circumstances in which the plan
4 specifically provides for and maintains re-
5 serves in excess of the amounts required
6 under subparagraph (A).

7 “(ii) The plan shall secure specific ex-
8 cess/stop loss insurance for the plan with
9 an attachment point which is at least equal
10 to an amount recommended by the plan’s
11 qualified actuary. The applicable authority
12 may by regulation, through negotiated
13 rulemaking, provide for adjustments in the
14 amount of such insurance in specified cir-
15 cumstances in which the plan specifically
16 provides for and maintains reserves in ex-
17 cess of the amounts required under sub-
18 paragraph (A).

19 “(iii) The plan shall secure indem-
20 nification insurance for any claims which
21 the plan is unable to satisfy by reason of
22 a plan termination.

23 Any regulations prescribed by the applicable authority
24 pursuant to clause (i) or (ii) of subparagraph (B) may
25 allow for such adjustments in the required levels of excess/

1 stop loss insurance as the qualified actuary may rec-
 2 ommend, taking into account the specific circumstances
 3 of the plan.

4 “(b) MINIMUM SURPLUS IN ADDITION TO CLAIMS
 5 RESERVES.—In the case of any association health plan de-
 6 scribed in subsection (a)(2), the requirements of this sub-
 7 section are met if the plan establishes and maintains sur-
 8 plus in an amount at least equal to—

9 “(1) \$500,000, or

10 “(2) such greater amount (but not greater than
 11 \$2,000,000) as may be set forth in regulations pre-
 12 scribed by the applicable authority through nego-
 13 tiated rulemaking, based on the level of aggregate
 14 and specific excess/stop loss insurance provided with
 15 respect to such plan.

16 “(c) ADDITIONAL REQUIREMENTS.—In the case of
 17 any association health plan described in subsection (a)(2),
 18 the applicable authority may provide such additional re-
 19 quirements relating to reserves and excess/stop loss insur-
 20 ance as the applicable authority considers appropriate.
 21 Such requirements may be provided by regulation, through
 22 negotiated rulemaking, with respect to any such plan or
 23 any class of such plans.

24 “(d) ADJUSTMENTS FOR EXCESS/STOP LOSS INSUR-
 25 ANCE.—The applicable authority may provide for adjust-

1 ments to the levels of reserves otherwise required under
 2 subsections (a) and (b) with respect to any plan or class
 3 of plans to take into account excess/stop loss insurance
 4 provided with respect to such plan or plans.

5 “(e) ALTERNATIVE MEANS OF COMPLIANCE.—The
 6 applicable authority may permit an association health plan
 7 described in subsection (a)(2) to substitute, for all or part
 8 of the requirements of this section (except subsection
 9 (a)(2)(B)(iii)), such security, guarantee, hold-harmless ar-
 10 rangement, or other financial arrangement as the applica-
 11 ble authority determines to be adequate to enable the plan
 12 to fully meet all its financial obligations on a timely basis
 13 and is otherwise no less protective of the interests of par-
 14 ticipants and beneficiaries than the requirements for
 15 which it is substituted. The applicable authority may take
 16 into account, for purposes of this subsection, evidence pro-
 17 vided by the plan or sponsor which demonstrates an as-
 18 sumption of liability with respect to the plan. Such evi-
 19 dence may be in the form of a contract of indemnification,
 20 lien, bonding, insurance, letter of credit, recourse under
 21 applicable terms of the plan in the form of assessments
 22 of participating employers, security, or other financial ar-
 23 rangement.

24 “(f) MEASURES TO ENSURE CONTINUED PAYMENT
 25 OF BENEFITS BY CERTAIN PLANS IN DISTRESS.—

1 “(1) PAYMENTS BY CERTAIN PLANS TO ASSO-
2 CIATION HEALTH PLAN FUND.—

3 “(A) IN GENERAL.—In the case of an as-
4 sociation health plan described in subsection
5 (a)(2), the requirements of this subsection are
6 met if the plan makes payments into the Asso-
7 ciation Health Plan Fund under this subpara-
8 graph when they are due. Such payments shall
9 consist of annual payments in the amount of
10 \$5,000, and, in addition to such annual pay-
11 ments, such supplemental payments as the Sec-
12 retary may determine to be necessary under
13 paragraph (2). Payments under this paragraph
14 are payable to the Fund at the time determined
15 by the Secretary. Initial payments are due in
16 advance of certification under this part. Pay-
17 ments shall continue to accrue until a plan’s as-
18 sets are distributed pursuant to a termination
19 procedure.

20 “(B) PENALTIES FOR FAILURE TO MAKE
21 PAYMENTS.—If any payment is not made by a
22 plan when it is due, a late payment charge of
23 not more than 100 percent of the payment
24 which was not timely paid shall be payable by
25 the plan to the Fund.

1 “(C) CONTINUED DUTY OF THE SEC-
 2 RETARY.—The Secretary shall not cease to
 3 carry out the provisions of paragraph (2) on ac-
 4 count of the failure of a plan to pay any pay-
 5 ment when due.

6 “(2) PAYMENTS BY SECRETARY TO CONTINUE
 7 EXCESS/STOP LOSS INSURANCE COVERAGE AND IN-
 8 DEMNIFICATION INSURANCE COVERAGE FOR CER-
 9 TAIN PLANS.—In any case in which the applicable
 10 authority determines that there is, or that there is
 11 reason to believe that there will be: (A) a failure to
 12 take necessary corrective actions under section
 13 809(a) with respect to an association health plan de-
 14 scribed in subsection (a)(2); or (B) a termination of
 15 such a plan under section 809(b) or 810(b)(8) (and,
 16 if the applicable authority is not the Secretary, cer-
 17 tifies such determination to the Secretary), the Sec-
 18 retary shall determine the amounts necessary to
 19 make payments to an insurer (designated by the
 20 Secretary) to maintain in force excess/stop loss in-
 21 surance coverage or indemnification insurance cov-
 22 erage for such plan, if the Secretary determines that
 23 there is a reasonable expectation that, without such
 24 payments, claims would not be satisfied by reason of
 25 termination of such coverage. The Secretary shall, to

1 the extent provided in advance in appropriation
 2 Acts, pay such amounts so determined to the insurer
 3 designated by the Secretary.

4 “(3) ASSOCIATION HEALTH PLAN FUND.—

5 “(A) IN GENERAL.—There is established
 6 on the books of the Treasury a fund to be
 7 known as the ‘Association Health Plan Fund’.
 8 The Fund shall be available for making pay-
 9 ments pursuant to paragraph (2). The Fund
 10 shall be credited with payments received pursu-
 11 ant to paragraph (1)(A), penalties received pur-
 12 suant to paragraph (1)(B); and earnings on in-
 13 vestments of amounts of the Fund under sub-
 14 paragraph (B).

15 “(B) INVESTMENT.—Whenever the Sec-
 16 retary determines that the moneys of the fund
 17 are in excess of current needs, the Secretary
 18 may request the investment of such amounts as
 19 the Secretary determines advisable by the Sec-
 20 retary of the Treasury in obligations issued or
 21 guaranteed by the United States.

22 “(g) EXCESS/STOP LOSS INSURANCE.—For pur-
 23 poses of this section—

24 “(1) AGGREGATE EXCESS/STOP LOSS INSUR-
 25 ANCE.—The term ‘aggregate excess/stop loss insur-

1 ance’ means, in connection with an association
2 health plan, a contract—

3 “(A) under which an insurer (meeting such
4 minimum standards as the applicable authority
5 may prescribe by regulation through negotiated
6 rulemaking) provides for payment to the plan
7 with respect to aggregate claims under the plan
8 in excess of an amount or amounts specified in
9 such contract;

10 “(B) which is guaranteed renewable; and

11 “(C) which allows for payment of pre-
12 miums by any third party on behalf of the in-
13 sured plan.

14 “(2) SPECIFIC EXCESS/STOP LOSS INSUR-
15 ANCE.—The term ‘specific excess/stop loss insur-
16 ance’ means, in connection with an association
17 health plan, a contract—

18 “(A) under which an insurer (meeting such
19 minimum standards as the applicable authority
20 may prescribe by regulation through negotiated
21 rulemaking) provides for payment to the plan
22 with respect to claims under the plan in connec-
23 tion with a covered individual in excess of an
24 amount or amounts specified in such contract
25 in connection with such covered individual;

1 “(B) which is guaranteed renewable; and

2 “(C) which allows for payment of pre-
3 miums by any third party on behalf of the in-
4 sured plan.

5 “(h) INDEMNIFICATION INSURANCE.—For purposes
6 of this section, the term ‘indemnification insurance’
7 means, in connection with an association health plan, a
8 contract—

9 “(1) under which an insurer (meeting such min-
10 imum standards as the applicable authority may pre-
11 scribe through negotiated rulemaking) provides for
12 payment to the plan with respect to claims under the
13 plan which the plan is unable to satisfy by reason
14 of a termination pursuant to section 809(b) (relating
15 to mandatory termination);

16 “(2) which is guaranteed renewable and
17 noncancellable for any reason (except as the applica-
18 ble authority may prescribe by regulation through
19 negotiated rulemaking); and

20 “(3) which allows for payment of premiums by
21 any third party on behalf of the insured plan.

22 “(i) RESERVES.—For purposes of this section, the
23 term ‘reserves’ means, in connection with an association
24 health plan, plan assets which meet the fiduciary stand-
25 ards under part 4 and such additional requirements re-

1 garding liquidity as the applicable authority may prescribe
 2 through negotiated rulemaking.

3 “(j) SOLVENCY STANDARDS WORKING GROUP.—

4 “(1) IN GENERAL.—Within 90 days after the
 5 date of the enactment of the Small Business Health
 6 Fairness Act of 2003, the applicable authority shall
 7 establish a Solvency Standards Working Group. In
 8 prescribing the initial regulations under this section,
 9 the applicable authority shall take into account the
 10 recommendations of such Working Group.

11 “(2) MEMBERSHIP.—The Working Group shall
 12 consist of not more than 15 members appointed by
 13 the applicable authority. The applicable authority
 14 shall include among persons invited to membership
 15 on the Working Group at least one of each of the
 16 following:

17 “(A) a representative of the National Asso-
 18 ciation of Insurance Commissioners;

19 “(B) a representative of the American
 20 Academy of Actuaries;

21 “(C) a representative of the State govern-
 22 ments, or their interests;

23 “(D) a representative of existing self-in-
 24 sured arrangements, or their interests;

1 “(E) a representative of associations of the
 2 type referred to in section 801(b)(1), or their
 3 interests; and

4 “(F) a representative of multiemployer
 5 plans that are group health plans, or their in-
 6 terests.

7 **“SEC. 807. REQUIREMENTS FOR APPLICATION AND RE-**
 8 **LATED REQUIREMENTS.**

9 “(a) FILING FEE.—Under the procedure prescribed
 10 pursuant to section 802(a), an association health plan
 11 shall pay to the applicable authority at the time of filing
 12 an application for certification under this part a filing fee
 13 in the amount of \$5,000, which shall be available in the
 14 case of the Secretary, to the extent provided in appropria-
 15 tion Acts, for the sole purpose of administering the certifi-
 16 cation procedures applicable with respect to association
 17 health plans.

18 “(b) INFORMATION TO BE INCLUDED IN APPLICA-
 19 TION FOR CERTIFICATION.—An application for certifi-
 20 cation under this part meets the requirements of this sec-
 21 tion only if it includes, in a manner and form which shall
 22 be prescribed by the applicable authority through nego-
 23 tiated rulemaking, at least the following information:

24 “(1) IDENTIFYING INFORMATION.—The names
 25 and addresses of—

1 “(A) the sponsor; and

2 “(B) the members of the board of trustees
3 of the plan.

4 “(2) STATES IN WHICH PLAN INTENDS TO DO
5 BUSINESS.—The States in which participants and
6 beneficiaries under the plan are to be located and
7 the number of them expected to be located in each
8 such State.

9 “(3) BONDING REQUIREMENTS.—Evidence pro-
10 vided by the board of trustees that the bonding re-
11 quirements of section 412 will be met as of the date
12 of the application or (if later) commencement of op-
13 erations.

14 “(4) PLAN DOCUMENTS.—A copy of the docu-
15 ments governing the plan (including any bylaws and
16 trust agreements), the summary plan description,
17 and other material describing the benefits that will
18 be provided to participants and beneficiaries under
19 the plan.

20 “(5) AGREEMENTS WITH SERVICE PRO-
21 VIDERS.—A copy of any agreements between the
22 plan and contract administrators and other service
23 providers.

24 “(6) FUNDING REPORT.—In the case of asso-
25 ciation health plans providing benefits options in ad-

dition to health insurance coverage, a report setting forth information with respect to such additional benefit options determined as of a date within the 120-day period ending with the date of the application, including the following:

“(A) RESERVES.—A statement, certified by the board of trustees of the plan, and a statement of actuarial opinion, signed by a qualified actuary, that all applicable requirements of section 806 are or will be met in accordance with regulations which the applicable authority shall prescribe through negotiated rulemaking.

“(B) ADEQUACY OF CONTRIBUTION RATES.—A statement of actuarial opinion, signed by a qualified actuary, which sets forth a description of the extent to which contribution rates are adequate to provide for the payment of all obligations and the maintenance of required reserves under the plan for the 12-month period beginning with such date within such 120-day period, taking into account the expected coverage and experience of the plan. If the contribution rates are not fully adequate, the statement of actuarial opinion shall indicate

1 the extent to which the rates are inadequate
 2 and the changes needed to ensure adequacy.

3 “(C) CURRENT AND PROJECTED VALUE OF
 4 ASSETS AND LIABILITIES.—A statement of ac-
 5 tuarial opinion signed by a qualified actuary,
 6 which sets forth the current value of the assets
 7 and liabilities accumulated under the plan and
 8 a projection of the assets, liabilities, income,
 9 and expenses of the plan for the 12-month pe-
 10 riod referred to in subparagraph (B). The in-
 11 come statement shall identify separately the
 12 plan’s administrative expenses and claims.

13 “(D) COSTS OF COVERAGE TO BE
 14 CHARGED AND OTHER EXPENSES.—A state-
 15 ment of the costs of coverage to be charged, in-
 16 cluding an itemization of amounts for adminis-
 17 tration, reserves, and other expenses associated
 18 with the operation of the plan.

19 “(E) OTHER INFORMATION.—Any other
 20 information as may be determined by the appli-
 21 cable authority, by regulation through nego-
 22 tiated rulemaking, as necessary to carry out the
 23 purposes of this part.

24 “(c) FILING NOTICE OF CERTIFICATION WITH
 25 STATES.—A certification granted under this part to an

1 association health plan shall not be effective unless written
 2 notice of such certification is filed with the applicable
 3 State authority of each State in which at least 25 percent
 4 of the participants and beneficiaries under the plan are
 5 located. For purposes of this subsection, an individual
 6 shall be considered to be located in the State in which a
 7 known address of such individual is located or in which
 8 such individual is employed.

9 “(d) NOTICE OF MATERIAL CHANGES.—In the case
 10 of any association health plan certified under this part,
 11 descriptions of material changes in any information which
 12 was required to be submitted with the application for the
 13 certification under this part shall be filed in such form
 14 and manner as shall be prescribed by the applicable au-
 15 thority by regulation through negotiated rulemaking. The
 16 applicable authority may require by regulation, through
 17 negotiated rulemaking, prior notice of material changes
 18 with respect to specified matters which might serve as the
 19 basis for suspension or revocation of the certification.

20 “(e) REPORTING REQUIREMENTS FOR CERTAIN AS-
 21 SOCIATION HEALTH PLANS.—An association health plan
 22 certified under this part which provides benefit options in
 23 addition to health insurance coverage for such plan year
 24 shall meet the requirements of section 503B by filing an
 25 annual report under such section which shall include infor-

1 mation described in subsection (b)(6) with respect to the
 2 plan year and, notwithstanding section 503C(a)(1)(A),
 3 shall be filed with the applicable authority not later than
 4 90 days after the close of the plan year (or on such later
 5 date as may be prescribed by the applicable authority).
 6 The applicable authority may require by regulation
 7 through negotiated rulemaking such interim reports as it
 8 considers appropriate.

9 “(f) ENGAGEMENT OF QUALIFIED ACTUARY.—The
 10 board of trustees of each association health plan which
 11 provides benefits options in addition to health insurance
 12 coverage and which is applying for certification under this
 13 part or is certified under this part shall engage, on behalf
 14 of all participants and beneficiaries, a qualified actuary
 15 who shall be responsible for the preparation of the mate-
 16 rials comprising information necessary to be submitted by
 17 a qualified actuary under this part. The qualified actuary
 18 shall utilize such assumptions and techniques as are nec-
 19 essary to enable such actuary to form an opinion as to
 20 whether the contents of the matters reported under this
 21 part—

22 “(1) are in the aggregate reasonably related to
 23 the experience of the plan and to reasonable expecta-
 24 tions; and

1 “(2) represent such actuary’s best estimate of
2 anticipated experience under the plan.

3 The opinion by the qualified actuary shall be made with
4 respect to, and shall be made a part of, the annual report.

5 **“SEC. 808. NOTICE REQUIREMENTS FOR VOLUNTARY TER-**
6 **MINATION.**

7 “Except as provided in section 809(b), an association
8 health plan which is or has been certified under this part
9 may terminate (upon or at any time after cessation of ac-
10 cruals in benefit liabilities) only if the board of trustees—

11 “(1) not less than 60 days before the proposed
12 termination date, provides to the participants and
13 beneficiaries a written notice of intent to terminate
14 stating that such termination is intended and the
15 proposed termination date;

16 “(2) develops a plan for winding up the affairs
17 of the plan in connection with such termination in
18 a manner which will result in timely payment of all
19 benefits for which the plan is obligated; and

20 “(3) submits such plan in writing to the appli-
21 cable authority.

22 Actions required under this section shall be taken in such
23 form and manner as may be prescribed by the applicable
24 authority by regulation through negotiated rulemaking.

1 **“SEC. 809. CORRECTIVE ACTIONS AND MANDATORY TERMI-**
2 **NATION.**

3 “(a) ACTIONS TO AVOID DEPLETION OF RE-
4 SERVES.—An association health plan which is certified
5 under this part and which provides benefits other than
6 health insurance coverage shall continue to meet the re-
7 quirements of section 806, irrespective of whether such
8 certification continues in effect. The board of trustees of
9 such plan shall determine quarterly whether the require-
10 ments of section 806 are met. In any case in which the
11 board determines that there is reason to believe that there
12 is or will be a failure to meet such requirements, or the
13 applicable authority makes such a determination and so
14 notifies the board, the board shall immediately notify the
15 qualified actuary engaged by the plan, and such actuary
16 shall, not later than the end of the next following month,
17 make such recommendations to the board for corrective
18 action as the actuary determines necessary to ensure com-
19 pliance with section 806. Not later than 30 days after re-
20 ceiving from the actuary recommendations for corrective
21 actions, the board shall notify the applicable authority (in
22 such form and manner as the applicable authority may
23 prescribe by regulation through negotiated rulemaking) of
24 such recommendations of the actuary for corrective action,
25 together with a description of the actions (if any) that the
26 board has taken or plans to take in response to such rec-

1 ommendations. The board shall thereafter report to the
 2 applicable authority, in such form and frequency as the
 3 applicable authority may specify to the board, regarding
 4 corrective action taken by the board until the requirements
 5 of section 806 are met.

6 “(b) MANDATORY TERMINATION.—In any case in
 7 which—

8 “(1) the applicable authority has been notified
 9 under subsection (a) of a failure of an association
 10 health plan which is or has been certified under this
 11 part and is described in section 806(a)(2) to meet
 12 the requirements of section 806 and has not been
 13 notified by the board of trustees of the plan that
 14 corrective action has restored compliance with such
 15 requirements; and

16 “(2) the applicable authority determines that
 17 there is a reasonable expectation that the plan will
 18 continue to fail to meet the requirements of section
 19 806,

20 the board of trustees of the plan shall, at the direction
 21 of the applicable authority, terminate the plan and, in the
 22 course of the termination, take such actions as the appli-
 23 cable authority may require, including satisfying any
 24 claims referred to in section 806(a)(2)(B)(iii) and recov-
 25 ering for the plan any liability under subsection

1 (a)(2)(B)(iii) or (e) of section 806, as necessary to ensure
 2 that the affairs of the plan will be, to the maximum extent
 3 possible, wound up in a manner which will result in timely
 4 provision of all benefits for which the plan is obligated.

5 **“SEC. 810. TRUSTEESHIP BY THE SECRETARY OF INSOL-**
 6 **VENT ASSOCIATION HEALTH PLANS PRO-**
 7 **VIDING HEALTH BENEFITS IN ADDITION TO**
 8 **HEALTH INSURANCE COVERAGE.**

9 “(a) APPOINTMENT OF SECRETARY AS TRUSTEE FOR
 10 INSOLVENT PLANS.—Whenever the Secretary determines
 11 that an association health plan which is or has been cer-
 12 tified under this part and which is described in section
 13 806(a)(2) will be unable to provide benefits when due or
 14 is otherwise in a financially hazardous condition, as shall
 15 be defined by the Secretary by regulation through nego-
 16 tiated rulemaking, the Secretary shall, upon notice to the
 17 plan, apply to the appropriate United States district court
 18 for appointment of the Secretary as trustee to administer
 19 the plan for the duration of the insolvency. The plan may
 20 appear as a party and other interested persons may inter-
 21 vene in the proceedings at the discretion of the court. The
 22 court shall appoint such Secretary trustee if the court de-
 23 termines that the trusteeship is necessary to protect the
 24 interests of the participants and beneficiaries or providers
 25 of medical care or to avoid any unreasonable deterioration

1 of the financial condition of the plan. The trusteeship of
 2 such Secretary shall continue until the conditions de-
 3 scribed in the first sentence of this subsection are rem-
 4 edied or the plan is terminated.

5 “(b) POWERS AS TRUSTEE.—The Secretary, upon
 6 appointment as trustee under subsection (a), shall have
 7 the power—

8 “(1) to do any act authorized by the plan, this
 9 title, or other applicable provisions of law to be done
 10 by the plan administrator or any trustee of the plan;

11 “(2) to require the transfer of all (or any part)
 12 of the assets and records of the plan to the Sec-
 13 retary as trustee;

14 “(3) to invest any assets of the plan which the
 15 Secretary holds in accordance with the provisions of
 16 the plan, regulations prescribed by the Secretary
 17 through negotiated rulemaking, and applicable provi-
 18 sions of law;

19 “(4) to require the sponsor, the plan adminis-
 20 trator, any participating employer, and any employee
 21 organization representing plan participants to fur-
 22 nish any information with respect to the plan which
 23 the Secretary as trustee may reasonably need in
 24 order to administer the plan;

1 “(5) to collect for the plan any amounts due the
2 plan and to recover reasonable expenses of the trust-
3 eeship;

4 “(6) to commence, prosecute, or defend on be-
5 half of the plan any suit or proceeding involving the
6 plan;

7 “(7) to issue, publish, or file such notices, state-
8 ments, and reports as may be required by the Sec-
9 retary by regulation through negotiated rulemaking
10 or required by any order of the court;

11 “(8) to terminate the plan (or provide for its
12 termination in accordance with section 809(b)) and
13 liquidate the plan assets, to restore the plan to the
14 responsibility of the sponsor, or to continue the
15 trusteeship;

16 “(9) to provide for the enrollment of plan par-
17 ticipants and beneficiaries under appropriate cov-
18 erage options; and

19 “(10) to do such other acts as may be nec-
20 essary to comply with this title or any order of the
21 court and to protect the interests of plan partici-
22 pants and beneficiaries and providers of medical
23 care.

1 “(c) NOTICE OF APPOINTMENT.—As soon as prac-
2 ticable after the Secretary’s appointment as trustee, the
3 Secretary shall give notice of such appointment to—

4 “(1) the sponsor and plan administrator;

5 “(2) each participant;

6 “(3) each participating employer; and

7 “(4) if applicable, each employee organization
8 which, for purposes of collective bargaining, rep-
9 resents plan participants.

10 “(d) ADDITIONAL DUTIES.—Except to the extent in-
11 consistent with the provisions of this title, or as may be
12 otherwise ordered by the court, the Secretary, upon ap-
13 pointment as trustee under this section, shall be subject
14 to the same duties as those of a trustee under section 704
15 of title 11, United States Code, and shall have the duties
16 of a fiduciary for purposes of this title.

17 “(e) OTHER PROCEEDINGS.—An application by the
18 Secretary under this subsection may be filed notwith-
19 standing the pendency in the same or any other court of
20 any bankruptcy, mortgage foreclosure, or equity receiver-
21 ship proceeding, or any proceeding to reorganize, conserve,
22 or liquidate such plan or its property, or any proceeding
23 to enforce a lien against property of the plan.

24 “(f) JURISDICTION OF COURT.—

1 “(1) IN GENERAL.—Upon the filing of an appli-
2 cation for the appointment as trustee or the issuance
3 of a decree under this section, the court to which the
4 application is made shall have exclusive jurisdiction
5 of the plan involved and its property wherever lo-
6 cated with the powers, to the extent consistent with
7 the purposes of this section, of a court of the United
8 States having jurisdiction over cases under chapter
9 11 of title 11, United States Code. Pending an adju-
10 dication under this section such court shall stay, and
11 upon appointment by it of the Secretary as trustee,
12 such court shall continue the stay of, any pending
13 mortgage foreclosure, equity receivership, or other
14 proceeding to reorganize, conserve, or liquidate the
15 plan, the sponsor, or property of such plan or spon-
16 sor, and any other suit against any receiver, conser-
17 vator, or trustee of the plan, the sponsor, or prop-
18 erty of the plan or sponsor. Pending such adjudica-
19 tion and upon the appointment by it of the Sec-
20 retary as trustee, the court may stay any proceeding
21 to enforce a lien against property of the plan or the
22 sponsor or any other suit against the plan or the
23 sponsor.

24 “(2) VENUE.—An action under this section
25 may be brought in the judicial district where the

1 sponsor or the plan administrator resides or does
 2 business or where any asset of the plan is situated.
 3 A district court in which such action is brought may
 4 issue process with respect to such action in any
 5 other judicial district.

6 “(g) PERSONNEL.—In accordance with regulations
 7 which shall be prescribed by the Secretary through nego-
 8 tiated rulemaking, the Secretary shall appoint, retain, and
 9 compensate accountants, actuaries, and other professional
 10 service personnel as may be necessary in connection with
 11 the Secretary’s service as trustee under this section.

12 **“SEC. 811. STATE ASSESSMENT AUTHORITY.**

13 “(a) IN GENERAL.—Notwithstanding section 514, a
 14 State may impose by law a contribution tax on an associa-
 15 tion health plan described in section 806(a)(2), if the plan
 16 commenced operations in such State after the date of the
 17 enactment of the Small Business Health Fairness Act of
 18 2003.

19 “(b) CONTRIBUTION TAX.—For purposes of this sec-
 20 tion, the term ‘contribution tax’ imposed by a State on
 21 an association health plan means any tax imposed by such
 22 State if—

23 “(1) such tax is computed by applying a rate to
 24 the amount of premiums or contributions, with re-
 25 spect to individuals covered under the plan who are

1 residents of such State, which are received by the
 2 plan from participating employers located in such
 3 State or from such individuals;

4 “(2) the rate of such tax does not exceed the
 5 rate of any tax imposed by such State on premiums
 6 or contributions received by insurers or health main-
 7 tenance organizations for health insurance coverage
 8 offered in such State in connection with a group
 9 health plan;

10 “(3) such tax is otherwise nondiscriminatory;
 11 and

12 “(4) the amount of any such tax assessed on
 13 the plan is reduced by the amount of any tax or as-
 14 sessment otherwise imposed by the State on pre-
 15 miums, contributions, or both received by insurers or
 16 health maintenance organizations for health insur-
 17 ance coverage, aggregate excess/stop loss insurance
 18 (as defined in section 806(g)(1)), specific excess/
 19 stop loss insurance (as defined in section 806(g)(2)),
 20 other insurance related to the provision of medical
 21 care under the plan, or any combination thereof pro-
 22 vided by such insurers or health maintenance organi-
 23 zations in such State in connection with such plan.

24 **“SEC. 812. DEFINITIONS AND RULES OF CONSTRUCTION.**

25 “(a) DEFINITIONS.—For purposes of this part—

1 “(1) GROUP HEALTH PLAN.—The term ‘group
2 health plan’ has the meaning provided in section
3 733(a)(1) (after applying subsection (b) of this sec-
4 tion).

5 “(2) MEDICAL CARE.—The term ‘medical care’
6 has the meaning provided in section 733(a)(2).

7 “(3) HEALTH INSURANCE COVERAGE.—The
8 term ‘health insurance coverage’ has the meaning
9 provided in section 733(b)(1).

10 “(4) HEALTH INSURANCE ISSUER.—The term
11 ‘health insurance issuer’ has the meaning provided
12 in section 733(b)(2).

13 “(5) APPLICABLE AUTHORITY.—

14 “(A) IN GENERAL.—Except as provided in
15 subparagraph (B), the term ‘applicable author-
16 ity’ means, in connection with an association
17 health plan—

18 “(i) the State recognized pursuant to
19 subsection (c) of section 506 as the State
20 to which authority has been delegated in
21 connection with such plan; or

22 “(ii) if there if no State referred to in
23 clause (i), the Secretary.

24 “(B) EXCEPTIONS.—

1 “(i) JOINT AUTHORITIES.—Where
 2 such term appears in section 808(3), sec-
 3 tion 807(e) (in the first instance), section
 4 809(a) (in the second instance), section
 5 809(a) (in the fourth instance), and sec-
 6 tion 809(b)(1), such term means, in con-
 7 nection with an association health plan, the
 8 Secretary and the State referred to in sub-
 9 paragraph (A)(i) (if any) in connection
 10 with such plan.

11 “(ii) REGULATORY AUTHORITIES.—
 12 Where such term appears in section 802(a)
 13 (in the first instance), section 802(d), sec-
 14 tion 802(e), section 803(d), section
 15 805(a)(5), section 806(a)(2), section
 16 806(b), section 806(c), section 806(d),
 17 paragraphs (1)(A) and (2)(A) of section
 18 806(g), section 806(h), section 806(i), sec-
 19 tion 806(j), section 807(a) (in the second
 20 instance), section 807(b), section 807(d),
 21 section 807(e) (in the second instance),
 22 section 808 (in the matter after paragraph
 23 (3)), and section 809(a) (in the third in-
 24 stance), such term means, in connection

1 with an association health plan, the Sec-
 2 retary.

3 “(6) HEALTH STATUS-RELATED FACTOR.—The
 4 term ‘health status-related factor’ has the meaning
 5 provided in section 733(d)(2).

6 “(7) INDIVIDUAL MARKET.—

7 “(A) IN GENERAL.—The term ‘individual
 8 market’ means the market for health insurance
 9 coverage offered to individuals other than in
 10 connection with a group health plan.

11 “(B) TREATMENT OF VERY SMALL
 12 GROUPS.—

13 “(i) IN GENERAL.—Subject to clause
 14 (ii), such term includes coverage offered in
 15 connection with a group health plan that
 16 has fewer than 2 participants as current
 17 employees or participants described in sec-
 18 tion 732(d)(3) on the first day of the plan
 19 year.

20 “(ii) STATE EXCEPTION.—Clause (i)
 21 shall not apply in the case of health insur-
 22 ance coverage offered in a State if such
 23 State regulates the coverage described in
 24 such clause in the same manner and to the
 25 same extent as coverage in the small group

1 market (as defined in section 2791(e)(5) of
 2 the Public Health Service Act) is regulated
 3 by such State.

4 “(8) PARTICIPATING EMPLOYER.—The term
 5 ‘participating employer’ means, in connection with
 6 an association health plan, any employer, if any indi-
 7 vidual who is an employee of such employer, a part-
 8 ner in such employer, or a self-employed individual
 9 who is such employer (or any dependent, as defined
 10 under the terms of the plan, of such individual) is
 11 or was covered under such plan in connection with
 12 the status of such individual as such an employee,
 13 partner, or self-employed individual in relation to the
 14 plan.

15 “(9) APPLICABLE STATE AUTHORITY.—The
 16 term ‘applicable State authority’ means, with respect
 17 to a health insurance issuer in a State, the State in-
 18 surance commissioner or official or officials des-
 19 ignated by the State to enforce the requirements of
 20 title XXVII of the Public Health Service Act for the
 21 State involved with respect to such issuer.

22 “(10) QUALIFIED ACTUARY.—The term ‘quali-
 23 fied actuary’ means an individual who is a member
 24 of the American Academy of Actuaries or meets
 25 such reasonable standards and qualifications as the

1 Secretary may provide by regulation through nego-
 2 tiated rulemaking.

3 “(11) AFFILIATED MEMBER.—The term ‘affili-
 4 ated member’ means, in connection with a sponsor—

5 “(A) a person who is otherwise eligible to
 6 be a member of the sponsor but who elects an
 7 affiliated status with the sponsor,

8 “(B) in the case of a sponsor with mem-
 9 bers which consist of associations, a person who
 10 is a member of any such association and elects
 11 an affiliated status with the sponsor, or

12 “(C) in the case of an association health
 13 plan in existence on the date of the enactment
 14 of the Small Business Health Fairness Act of
 15 2003, a person eligible to be a member of the
 16 sponsor or one of its member associations.

17 “(12) LARGE EMPLOYER.—The term ‘large em-
 18 ployer’ means, in connection with a group health
 19 plan with respect to a plan year, an employer who
 20 employed an average of at least 51 employees on
 21 business days during the preceding calendar year
 22 and who employs at least 2 employees on the first
 23 day of the plan year.

24 “(13) SMALL EMPLOYER.—The term ‘small em-
 25 ployer’ means, in connection with a group health

1 plan with respect to a plan year, an employer who
 2 is not a large employer.

3 “(b) RULES OF CONSTRUCTION.—

4 “(1) EMPLOYERS AND EMPLOYEES.—For pur-
 5 poses of determining whether a plan, fund, or pro-
 6 gram is an employee welfare benefit plan which is an
 7 association health plan, and for purposes of applying
 8 this title in connection with such plan, fund, or pro-
 9 gram so determined to be such an employee welfare
 10 benefit plan—

11 “(A) in the case of a partnership, the term
 12 ‘employer’ (as defined in section 3(5)) includes
 13 the partnership in relation to the partners, and
 14 the term ‘employee’ (as defined in section 3(6))
 15 includes any partner in relation to the partner-
 16 ship; and

17 “(B) in the case of a self-employed indi-
 18 vidual, the term ‘employer’ (as defined in sec-
 19 tion 3(5)) and the term ‘employee’ (as defined
 20 in section 3(6)) shall include such individual.

21 “(2) PLANS, FUNDS, AND PROGRAMS TREATED
 22 AS EMPLOYEE WELFARE BENEFIT PLANS.—In the
 23 case of any plan, fund, or program which was estab-
 24 lished or is maintained for the purpose of providing
 25 medical care (through the purchase of insurance or

1 otherwise) for employees (or their dependents) cov-
 2 ered thereunder and which demonstrates to the Sec-
 3 retary that all requirements for certification under
 4 this part would be met with respect to such plan,
 5 fund, or program if such plan, fund, or program
 6 were a group health plan, such plan, fund, or pro-
 7 gram shall be treated for purposes of this title as an
 8 employee welfare benefit plan on and after the date
 9 of such demonstration.”.

10 (b) CONFORMING AMENDMENTS TO PREEMPTION
 11 RULES.—

12 (1) Section 514(b)(6) of such Act (29 U.S.C.
 13 1144(b)(6)) is amended by adding at the end the
 14 following new subparagraph:

15 “(E) The preceding subparagraphs of this paragraph
 16 do not apply with respect to any State law in the case
 17 of an association health plan which is certified under part
 18 8.”.

19 (2) Section 514 of such Act (29 U.S.C. 1144)
 20 is amended—

21 (A) in subsection (b)(4), by striking “Sub-
 22 section (a)” and inserting “Subsections (a) and
 23 (e)”;

24 (B) in subsection (b)(5), by striking “sub-
 25 section (a)” in subparagraph (A) and inserting

1 “subsection (a) of this section and subsections
 2 (a)(2)(B) and (b) of section 805”, and by strik-
 3 ing “subsection (a)” in subparagraph (B) and
 4 inserting “subsection (a) of this section or sub-
 5 section (a)(2)(B) or (b) of section 805”;

6 (C) by redesignating subsection (d) as sub-
 7 section (e); and

8 (D) by inserting after subsection (c) the
 9 following new subsection:

10 “(d)(1) Except as provided in subsection (b)(4), the
 11 provisions of this title shall supersede any and all State
 12 laws insofar as they may now or hereafter preclude, or
 13 have the effect of precluding, a health insurance issuer
 14 from offering health insurance coverage in connection with
 15 an association health plan which is certified under part
 16 8.

17 “(2) Except as provided in paragraphs (4) and (5)
 18 of subsection (b) of this section—

19 “(A) In any case in which health insurance cov-
 20 erage of any policy type is offered under an associa-
 21 tion health plan certified under part 8 to a partici-
 22 pating employer operating in such State, the provi-
 23 sions of this title shall supersede any and all laws
 24 of such State insofar as they may preclude a health
 25 insurance issuer from offering health insurance cov-

1 erage of the same policy type to other employers op-
 2 erating in the State which are eligible for coverage
 3 under such association health plan, whether or not
 4 such other employers are participating employers in
 5 such plan.

6 “(B) In any case in which health insurance cov-
 7 erage of any policy type is offered under an associa-
 8 tion health plan in a State and the filing, with the
 9 applicable State authority, of the policy form in con-
 10 nection with such policy type is approved by such
 11 State authority, the provisions of this title shall su-
 12 persede any and all laws of any other State in which
 13 health insurance coverage of such type is offered, in-
 14 sofar as they may preclude, upon the filing in the
 15 same form and manner of such policy form with the
 16 applicable State authority in such other State, the
 17 approval of the filing in such other State.

18 “(3) For additional provisions relating to association
 19 health plans, see subsections (a)(2)(B) and (b) of section
 20 805.

21 “(4) For purposes of this subsection, the term ‘asso-
 22 ciation health plan’ has the meaning provided in section
 23 801(a), and the terms ‘health insurance coverage’, ‘par-
 24 ticipating employer’, and ‘health insurance issuer’ have

1 the meanings provided such terms in section 811, respec-
 2 tively.”.

3 (3) Section 514(b)(6)(A) of such Act (29
 4 U.S.C. 1144(b)(6)(A)) is amended—

5 (A) in clause (i)(II), by striking “and” at
 6 the end;

7 (B) in clause (ii), by inserting “and which
 8 does not provide medical care (within the mean-
 9 ing of section 733(a)(2)),” after “arrange-
 10 ment,” and by striking “title.” and inserting
 11 “title, and”; and

12 (C) by adding at the end the following new
 13 clause:

14 “(iii) subject to subparagraph (E), in the case
 15 of any other employee welfare benefit plan which is
 16 a multiple employer welfare arrangement and which
 17 provides medical care (within the meaning of section
 18 733(a)(2)), any law of any State which regulates in-
 19 surance may apply.”.

20 (4) Section 514(e) of such Act (as redesignated
 21 by paragraph (2)(C)) is amended—

22 (A) by striking “Nothing” and inserting
 23 “(1) Except as provided in paragraph (2), noth-
 24 ing”; and

1 (B) by adding at the end the following new
2 paragraph:

3 “(2) Nothing in any other provision of law enacted
4 on or after the date of the enactment of the Small Busi-
5 ness Health Fairness Act of 2003 shall be construed to
6 alter, amend, modify, invalidate, impair, or supersede any
7 provision of this title, except by specific cross-reference to
8 the affected section.”.

9 (c) PLAN SPONSOR.—Section 3(16)(B) of such Act
10 (29 U.S.C. 102(16)(B)) is amended by adding at the end
11 the following new sentence: “Such term also includes a
12 person serving as the sponsor of an association health plan
13 under part 8.”.

14 (d) DISCLOSURE OF SOLVENCY PROTECTIONS RE-
15 LATED TO SELF-INSURED AND FULLY INSURED OPTIONS
16 UNDER ASSOCIATION HEALTH PLANS.—Section 102(b)
17 of such Act (29 U.S.C. 102(b)) is amended by adding at
18 the end the following: “An association health plan shall
19 include in its summary plan description, in connection
20 with each benefit option, a description of the form of sol-
21 vency or guarantee fund protection secured pursuant to
22 this Act or applicable State law, if any.”.

23 (e) SAVINGS CLAUSE.—Section 731(c) of such Act is
24 amended by inserting “or part 8” after “this part”.

1 (f) REPORT TO THE CONGRESS REGARDING CERTIFI-
 2 CATION OF SELF-INSURED ASSOCIATION HEALTH
 3 PLANS.—Not later than January 1, 2008, the Secretary
 4 of Labor shall report to the Committee on Education and
 5 the Workforce of the House of Representatives and the
 6 Committee on Health, Education, Labor, and Pensions of
 7 the Senate the effect association health plans have had,
 8 if any, on reducing the number of uninsured individuals.

9 (g) CLERICAL AMENDMENT.—The table of contents
 10 in section 1 of the Employee Retirement Income Security
 11 Act of 1974 is amended by inserting after the item relat-
 12 ing to section 734 the following new items:

“PART 8—RULES GOVERNING ASSOCIATION HEALTH PLANS

“Sec. 801. Association health plans.

“Sec. 802. Certification of association health plans.

“Sec. 803. Requirements relating to sponsors and boards of trustees.

“Sec. 804. Participation and coverage requirements.

“Sec. 805. Other requirements relating to plan documents, contribution rates,
and benefit options.

“Sec. 806. Maintenance of reserves and provisions for solvency for plans pro-
viding health benefits in addition to health insurance coverage.

“Sec. 807. Requirements for application and related requirements.

“Sec. 808. Notice requirements for voluntary termination.

“Sec. 809. Corrective actions and mandatory termination.

“Sec. 810. Trusteeship by the Secretary of insolvent association health plans
providing health benefits in addition to health insurance cov-
erage.

“Sec. 811. State assessment authority.

“Sec. 812. Definitions and rules of construction.”.

13 **SEC. 3. CLARIFICATION OF TREATMENT OF SINGLE EM-**
 14 **PLOYER ARRANGEMENTS.**

15 Section 3(40)(B) of the Employee Retirement Income
 16 Security Act of 1974 (29 U.S.C. 1002(40)(B)) is amend-
 17 ed—

1 (1) in clause (i), by inserting “for any plan year
 2 of any such plan, or any fiscal year of any such
 3 other arrangement;” after “single employer”, and by
 4 inserting “during such year or at any time during
 5 the preceding 1-year period” after “control group”;

6 (2) in clause (iii)—

7 (A) by striking “common control shall not
 8 be based on an interest of less than 25 percent”
 9 and inserting “an interest of greater than 25
 10 percent may not be required as the minimum
 11 interest necessary for common control”; and

12 (B) by striking “similar to” and inserting
 13 “consistent and coextensive with”;

14 (3) by redesignating clauses (iv) and (v) as
 15 clauses (v) and (vi), respectively; and

16 (4) by inserting after clause (iii) the following
 17 new clause:

18 “(iv) in determining, after the application of
 19 clause (i), whether benefits are provided to employ-
 20 ees of two or more employers, the arrangement shall
 21 be treated as having only one participating employer
 22 if, after the application of clause (i), the number of
 23 individuals who are employees and former employees
 24 of any one participating employer and who are cov-
 25 ered under the arrangement is greater than 75 per-

1 cent of the aggregate number of all individuals who
 2 are employees or former employees of participating
 3 employers and who are covered under the arrange-
 4 ment;”.

5 **SEC. 4. CLARIFICATION OF TREATMENT OF CERTAIN COL-**
 6 **LECTIVELY BARGAINED ARRANGEMENTS.**

7 (a) IN GENERAL.—Section 3(40)(A)(i) of the Em-
 8 ployee Retirement Income Security Act of 1974 (29
 9 U.S.C. 1002(40)(A)(i)) is amended to read as follows:

10 “(i)(I) under or pursuant to one or more collec-
 11 tive bargaining agreements which are reached pursu-
 12 ant to collective bargaining described in section 8(d)
 13 of the National Labor Relations Act (29 U.S.C.
 14 158(d)) or paragraph Fourth of section 2 of the
 15 Railway Labor Act (45 U.S.C. 152, paragraph
 16 Fourth) or which are reached pursuant to labor-
 17 management negotiations under similar provisions of
 18 State public employee relations laws, and (II) in ac-
 19 cordance with subparagraphs (C), (D), and (E);”.

20 (b) LIMITATIONS.—Section 3(40) of such Act (29
 21 U.S.C. 1002(40)) is amended by adding at the end the
 22 following new subparagraphs:

23 “(C) For purposes of subparagraph (A)(i)(II), a plan
 24 or other arrangement shall be treated as established or

1 maintained in accordance with this subparagraph only if
2 the following requirements are met:

3 “(i) The plan or other arrangement, and the
4 employee organization or any other entity sponsoring
5 the plan or other arrangement, do not—

6 “(I) utilize the services of any licensed in-
7 surance agent or broker for soliciting or enroll-
8 ing employers or individuals as participating
9 employers or covered individuals under the plan
10 or other arrangement; or

11 “(II) pay any type of compensation to a
12 person, other than a full time employee of the
13 employee organization (or a member of the or-
14 ganization to the extent provided in regulations
15 prescribed by the Secretary through negotiated
16 rulemaking), that is related either to the volume
17 or number of employers or individuals solicited
18 or enrolled as participating employers or cov-
19 ered individuals under the plan or other ar-
20 rangement, or to the dollar amount or size of
21 the contributions made by participating employ-
22 ers or covered individuals to the plan or other
23 arrangement;

24 except to the extent that the services used by the
25 plan, arrangement, organization, or other entity con-

1 sist solely of preparation of documents necessary for
2 compliance with the reporting and disclosure re-
3 quirements of part 1 or administrative, investment,
4 or consulting services unrelated to solicitation or en-
5 rollment of covered individuals.

6 “(ii) As of the end of the preceding plan year,
7 the number of covered individuals under the plan or
8 other arrangement who are neither—

9 “(I) employed within a bargaining unit
10 covered by any of the collective bargaining
11 agreements with a participating employer (nor
12 covered on the basis of an individual’s employ-
13 ment in such a bargaining unit); nor

14 “(II) present employees (or former employ-
15 ees who were covered while employed) of the
16 sponsoring employee organization, of an em-
17 ployer who is or was a party to any of the col-
18 lective bargaining agreements, or of the plan or
19 other arrangement or a related plan or arrange-
20 ment (nor covered on the basis of such present
21 or former employment),

22 does not exceed 15 percent of the total number of
23 individuals who are covered under the plan or ar-
24 rangement and who are present or former employees
25 who are or were covered under the plan or arrange-

1 ment pursuant to a collective bargaining agreement
2 with a participating employer. The requirements of
3 the preceding provisions of this clause shall be treat-
4 ed as satisfied if, as of the end of the preceding plan
5 year, such covered individuals are comprised solely
6 of individuals who were covered individuals under
7 the plan or other arrangement as of the date of the
8 enactment of the Small Business Health Fairness
9 Act of 2003 and, as of the end of the preceding plan
10 year, the number of such covered individuals does
11 not exceed 25 percent of the total number of present
12 and former employees enrolled under the plan or
13 other arrangement.

14 “(iii) The employee organization or other entity
15 sponsoring the plan or other arrangement certifies
16 to the Secretary each year, in a form and manner
17 which shall be prescribed by the Secretary through
18 negotiated rulemaking that the plan or other ar-
19 rangement meets the requirements of clauses (i) and
20 (ii).

21 “(D) For purposes of subparagraph (A)(i)(II), a plan
22 or arrangement shall be treated as established or main-
23 tained in accordance with this subparagraph only if—

1 “(i) all of the benefits provided under the plan
2 or arrangement consist of health insurance coverage;
3 or

4 “(ii)(I) the plan or arrangement is a multiem-
5 ployer plan; and

6 “(II) the requirements of clause (B) of the pro-
7 viso to clause (5) of section 302(c) of the Labor
8 Management Relations Act, 1947 (29 U.S.C.
9 186(c)) are met with respect to such plan or other
10 arrangement.

11 “(E) For purposes of subparagraph (A)(i)(II), a plan
12 or arrangement shall be treated as established or main-
13 tained in accordance with this subparagraph only if—

14 “(i) the plan or arrangement is in effect as of
15 the date of the enactment of the Small Business
16 Health Fairness Act of 2003; or

17 “(ii) the employee organization or other entity
18 sponsoring the plan or arrangement—

19 “(I) has been in existence for at least 3
20 years; or

21 “(II) demonstrates to the satisfaction of
22 the Secretary that the requirements of subpara-
23 graphs (C) and (D) are met with respect to the
24 plan or other arrangement.”.

1 (c) CONFORMING AMENDMENTS TO DEFINITIONS OF
 2 PARTICIPANT AND BENEFICIARY.—Section 3(7) of such
 3 Act (29 U.S.C. 1002(7)) is amended by adding at the end
 4 the following new sentence: “Such term includes an indi-
 5 vidual who is a covered individual described in paragraph
 6 (40)(C)(ii).”.

7 **SEC. 5. ENFORCEMENT PROVISIONS RELATING TO ASSO-**
 8 **CIATION HEALTH PLANS.**

9 (a) CRIMINAL PENALTIES FOR CERTAIN WILLFUL
 10 MISREPRESENTATIONS.—Section 501 of the Employee
 11 Retirement Income Security Act of 1974 (29 U.S.C. 1131)
 12 is amended—

13 (1) by inserting “(a)” after “SEC. 501.”; and

14 (2) by adding at the end the following new sub-
 15 section:

16 “(b) Any person who willfully falsely represents, to
 17 any employee, any employee’s beneficiary, any employer,
 18 the Secretary, or any State, a plan or other arrangement
 19 established or maintained for the purpose of offering or
 20 providing any benefit described in section 3(1) to employ-
 21 ees or their beneficiaries as—

22 “(1) being an association health plan which has
 23 been certified under part 8;

24 “(2) having been established or maintained
 25 under or pursuant to one or more collective bar-

1 gaining agreements which are reached pursuant to
 2 collective bargaining described in section 8(d) of the
 3 National Labor Relations Act (29 U.S.C. 158(d)) or
 4 paragraph Fourth of section 2 of the Railway Labor
 5 Act (45 U.S.C. 152, paragraph Fourth) or which are
 6 reached pursuant to labor-management negotiations
 7 under similar provisions of State public employee re-
 8 lations laws; or

9 “(3) being a plan or arrangement with respect
 10 to which the requirements of subparagraph (C), (D),
 11 or (E) of section 3(40) are met,

12 shall, upon conviction, be imprisoned not more than 5
 13 years, be fined under title 18, United States Code, or
 14 both.”.

15 (b) CEASE ACTIVITIES ORDERS.—Section 502 of
 16 such Act (29 U.S.C. 1132), as amended by sections 141
 17 and 143, is further amended by adding at the end the
 18 following new subsection:

19 “(p) ASSOCIATION HEALTH PLAN CEASE AND DE-
 20 SIST ORDERS.—

21 “(1) IN GENERAL.—Subject to paragraph (2),
 22 upon application by the Secretary showing the oper-
 23 ation, promotion, or marketing of an association
 24 health plan (or similar arrangement providing bene-

1 fits consisting of medical care (as defined in section
2 733(a)(2))) that—

3 “(A) is not certified under part 8, is sub-
4 ject under section 514(b)(6) to the insurance
5 laws of any State in which the plan or arrange-
6 ment offers or provides benefits, and is not li-
7 censed, registered, or otherwise approved under
8 the insurance laws of such State; or

9 “(B) is an association health plan certified
10 under part 8 and is not operating in accordance
11 with the requirements under part 8 for such
12 certification,

13 a district court of the United States shall enter an
14 order requiring that the plan or arrangement cease
15 activities.

16 “(2) EXCEPTION.—Paragraph (1) shall not
17 apply in the case of an association health plan or
18 other arrangement if the plan or arrangement shows
19 that—

20 “(A) all benefits under it referred to in
21 paragraph (1) consist of health insurance cov-
22 erage; and

23 “(B) with respect to each State in which
24 the plan or arrangement offers or provides ben-
25 efits, the plan or arrangement is operating in

“(3) ADDITIONAL EQUITABLE RELIEF.—The court may grant such additional equitable relief, including any relief available under this title, as it deems necessary to protect the interests of the public and of persons having claims for benefits against the plan.”.

9 (c) RESPONSIBILITY FOR CLAIMS PROCEDURE.—
10 Section 503 of such Act (29 U.S.C. 1133), as amended
11 by section 301(b), is amended by adding at the end the
12 following new subsection:

13 “(c) ASSOCIATION HEALTH PLANS.—The terms of
14 each association health plan which is or has been certified
15 under part 8 shall require the board of trustees or the
16 named fiduciary (as applicable) to ensure that the require-
17 ments of this section are met in connection with claims
18 filed under the plan.”.

19 **SEC. 6. COOPERATION BETWEEN FEDERAL AND STATE AU-**
20 **THORITIES.**

Section 506 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1136) is amended by adding at the end the following new subsection:

24 “(c) CONSULTATION WITH STATES WITH RESPECT
25 TO ASSOCIATION HEALTH PLANS.—

1 “(1) AGREEMENTS WITH STATES.—The Sec-
 2 retary shall consult with the State recognized under
 3 paragraph (2) with respect to an association health
 4 plan regarding the exercise of—

5 “(A) the Secretary’s authority under sec-
 6 tions 502 and 504 to enforce the requirements
 7 for certification under part 8; and

8 “(B) the Secretary’s authority to certify
 9 association health plans under part 8 in accord-
 10 ance with regulations of the Secretary applica-
 11 ble to certification under part 8.

12 “(2) RECOGNITION OF PRIMARY DOMICILE
 13 STATE.—In carrying out paragraph (1), the Sec-
 14 retary shall ensure that only one State will be recog-
 15 nized, with respect to any particular association
 16 health plan, as the State to with which consultation
 17 is required. In carrying out this paragraph, the Sec-
 18 retary shall take into account the places of residence
 19 of the participants and beneficiaries under the plan
 20 and the State in which the trust is maintained.”.

21 **SEC. 7. EFFECTIVE DATE AND TRANSITIONAL AND OTHER**
 22 **RULES.**

23 (a) EFFECTIVE DATE.—The amendments made by
 24 sections 2, 5, and 6 shall take effect one year from the
 25 date of the enactment. The amendments made by sections

1 3 and 4 shall take effect on the date of the enactment
 2 of this Act. The Secretary of Labor shall first issue all
 3 regulations necessary to carry out the amendments made
 4 by this subtitle within one year from the date of the enact-
 5 ment. Such regulations shall be issued through negotiated
 6 rulemaking.

7 (b) EXCEPTION.—Section 801(a)(2) of the Employee
 8 Retirement Income Security Act of 1974 (added by section
 9 2) does not apply in connection with an association health
 10 plan (certified under part 8 of subtitle B of title I of such
 11 Act) existing on the date of the enactment of this Act,
 12 if no benefits provided thereunder as of the date of the
 13 enactment of this Act consist of health insurance coverage
 14 (as defined in section 733(b)(1) of such Act).

15 (c) TREATMENT OF CERTAIN EXISTING HEALTH
 16 BENEFITS PROGRAMS.—

17 (1) IN GENERAL.—In any case in which, as of
 18 the date of the enactment of this Act, an arrange-
 19 ment is maintained in a State for the purpose of
 20 providing benefits consisting of medical care for the
 21 employees and beneficiaries of its participating em-
 22 ployers, at least 200 participating employers make
 23 contributions to such arrangement, such arrange-
 24 ment has been in existence for at least 10 years, and
 25 such arrangement is licensed under the laws of one

1 or more States to provide such benefits to its par-
2 ticipating employers, upon the filing with the appli-
3 cable authority (as defined in section 812(a)(5) of
4 the Employee Retirement Income Security Act of
5 1974 (as amended by this subtitle)) by the arrange-
6 ment of an application for certification of the ar-
7 rangement under part 8 of subtitle B of title I of
8 such Act—

9 (A) such arrangement shall be deemed to
10 be a group health plan for purposes of title I
11 of such Act;

12 (B) the requirements of sections 801(a)(1)
13 and 803(a)(1) of the Employee Retirement In-
14 come Security Act of 1974 shall be deemed met
15 with respect to such arrangement;

16 (C) the requirements of section 803(b) of
17 such Act shall be deemed met, if the arrange-
18 ment is operated by a board of directors
19 which—

20 (i) is elected by the participating em-
21 ployers, with each employer having one
22 vote; and

23 (ii) has complete fiscal control over
24 the arrangement and which is responsible
25 for all operations of the arrangement;

1 (D) the requirements of section 804(a) of
2 such Act shall be deemed met with respect to
3 such arrangement; and

4 (E) the arrangement may be certified by
5 any applicable authority with respect to its op-
6 erations in any State only if it operates in such
7 State on the date of certification.

8 The provisions of this subsection shall cease to apply
9 with respect to any such arrangement at such time
10 after the date of the enactment of this Act as the
11 applicable requirements of this subsection are not
12 met with respect to such arrangement.

13 (2) DEFINITIONS.—For purposes of this sub-
14 section, the terms “group health plan”, “medical
15 care”, and “participating employer” shall have the
16 meanings provided in section 812 of the Employee
17 Retirement Income Security Act of 1974, except
18 that the reference in paragraph (7) of such section
19 to an “association health plan” shall be deemed a
20 reference to an arrangement referred to in this sub-
21 section.

○